

Clerk  
District Court

JUN 19 2006

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS

TOSHIHIRO TAKAHASHI,

Plaintiff,

vs.

MAEDA PACIFIC CORPORATION,

Defendant.

CIVIL ACTION NO. CV 05-0026

STIPULATED JURY INSTRUCTIONS

The attached Jury Instructions are submitted to the Court pursuant a stipulation between  
the Plaintiff and Defendant.

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Attorney for Toshiro Takahashi

CARLSMITH BALL LLP

  
JOHN OSBORN

Attorney for Maeda Pacific Corporation

DATED: June 19, 2006

DATED: June 19, 2006

1 INSTRUCTION NO. \_\_\_\_\_  
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3 Members of the jury, now that you have heard all the evidence, it is my duty to instruct  
4 you on the law which applies to this case. A copy of these instructions will be available in the  
5 jury room for you to consult if you find it necessary.

6 It is your duty to find the facts from all the evidence in the case. To those facts you will  
7 apply the law as I give it to you. You must follow the law as I give it to you whether you agree  
8 with it or not. You must not be influenced by any personal likes and dislikes, opinions,  
9 prejudices, or sympathy. That means that you must decide the case solely on the evidence before  
10 you. You will recall that you took an oath promising to do so at the beginning of the case.

11 In following my instructions, you must follow all of them and not single out some and  
12 ignore others; they are all equally important. You must not read into these instructions or into  
13 anything the court may have said or done any suggestions as to what verdict you should return - -  
14 that is a matter entirely up to you.  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 The evidence from which you are to decide what the facts are consists of:

4 (1) the sworn testimony of any witness;

5 (2) the exhibits which have been received into evidence; and

6 (3) any facts to which the lawyers have agreed or stipulated.  
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INSTRUCTION NO. \_\_\_\_\_

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

- (1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.
- (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection and by the Court's ruling on it.
- (3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered.
- (4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

1 INSTRUCTION NO. \_\_\_\_\_  
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4 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such  
5 as testimony by a witness about what the witness personally saw or heard or did. Circumstantial  
6 evidence is proof of one or more facts from which you could find another fact. You should  
7 consider both kinds of evidence. The law makes no distinction between the weight to be given to  
8 either direct or circumstantial evidence. It is for you to decide how much weight to give to any  
9 evidence.  
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1 INSTRUCTION NO. \_\_\_\_\_  
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4 In deciding the facts in this case, you may have to decide which testimony to believe and  
5 which testimony not to believe. You may believe everything a witness says, or part of it, or none  
6 of it.

7 In considering the testimony of any witness, you may take into account:

- 8 (1) the opportunity and ability of the witness to see or hear or know the things testified to;  
9 (2) the witness' memory;  
10 (3) the witness' manner while testifying;  
11 (4) the witness' interest in the outcome of the case and any bias or prejudice;  
12 (5) whether other evidence contradicted the witness' testimony;  
13 (6) the reasonableness of the witness' testimony in light of all the evidence; and  
14 (7) any other factors that bears on believability.

15 The weight of the evidence as to a fact does not necessarily depend on the number of  
16 witnesses who testify.  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 You are not required to decide any issue based solely upon the number of witnesses that  
4 have testified on the opposing sides. The testimony of one witness worthy of belief is sufficient  
5 to prove any fact. This does not mean that you are free to disregard the testimony of any witness  
6 merely from caprice or prejudice, or from a desire to favor either side. It does mean that you  
7 must not decide anything by simply counting the number of witnesses who have testified on the  
8 opposing sides. The final test is not the relative number of witnesses, but the convincing force of  
9 the evidence.

1 INSTRUCTION NO. \_\_\_\_\_  
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4 In determining what inferences to draw from the evidence you may consider among other  
5 things, a party's failure to explain or to deny that evidence.  
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1 INSTRUCTION NO. \_\_\_\_\_  
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4 You have heard testimony from a person who, because of education or experience, is  
5 permitted to state opinions and the reasons for those opinions.

6 Opinion testimony should be judged just like any other testimony. You may accept it or  
7 reject it, and give it as much weight as you think it deserves, considering the witness' education  
8 and experience, the reasons given for the opinion, and all the other evidence in the case.  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 Japanese has been used during this trial.

4 The evidence you are to consider is only that provided through the official court  
5 translator. Although some of you may know Japanese, it is important that all jurors consider the  
6 same evidence. Therefore, you must base your decision on the evidence presented in the English  
7 translation. You must disregard any different meaning.  
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1 INSTRUCTION NO. \_\_\_\_\_  
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4 Certain charts and summaries have been received into evidence to illustrate information  
5 brought out in the trial. Charts and summaries are only as good as the underlying evidence that  
6 supports them. You should, therefore, give them only such weight as you think the underlying  
7 evidence deserves.  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 All parties are equal before the law and a corporation is entitled to the same fair and  
4 conscientious consideration by you as any party.  
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1 INSTRUCTION NO. \_\_\_\_\_

2  
3 Under the law, a corporation is considered to be a person. It can only act through its  
4 employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts of  
5 its employees, agents, directors, and officers performed within the scope of authority.  
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1 INSTRUCTION NO. \_\_\_\_\_

2  
3 The plaintiff seeks to recover damages based upon a claim of negligence.

4 The essential elements of this claim are:

- 5 1. The defendant was negligent;
- 6 2. Defendant's negligence was a cause of injury to plaintiff.
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1 INSTRUCTION NO. \_\_\_\_\_

2 Negligence is the doing of something which a reasonably prudent person would not do,  
3 or the failure to do something which a reasonably prudent person would do, under circumstances  
4 similar to those shown by the evidence.

5 It is the failure to use ordinary or reasonable care.

6 Ordinary or reasonable care is that care which persons of ordinary prudence would use in  
7 order to avoid injury to themselves or others under circumstances similar to those shown by the  
8 evidence.

1 INSTRUCTION NO. \_\_\_\_\_

2           One test that is helpful in determining whether a person was negligent is to ask and  
3 answer the question whether or not, if a person of ordinary prudence had been in the same  
4 situation and possessed of the same knowledge, he or she would have foreseen or anticipated that  
5 someone might have been injured by or as a result of his or her action or inaction. If the answer  
6 to that question is "yes", and if the action or inaction reasonably could have been avoided, then  
7 not to avoid it would be negligence.  
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1 INSTRUCTION NO. \_\_\_\_\_

2           The amount of caution required of a person in the exercise of ordinary care depends upon  
3 the conditions that are apparent or that should be apparent to a reasonably prudent person under  
4 circumstances similar to those shown by the evidence.  
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1 INSTRUCTION NO. \_\_\_\_\_  
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4 The amount of damages claimed either by the written pleadings, or in the argument of  
5 counsel must not be considered by you as evidence of reasonable compensation.  
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1 INSTRUCTION NO. \_\_\_\_\_  
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4 Every person who is exercising ordinary care has a right to assume that every other  
5 person will perform his duty. In the absence of reasonable cause for thinking otherwise, it is not  
6 negligence for a person to fail to anticipate an accident which can occur only as a result of a  
7 violation of duty by another person.  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 When a party has the burden of proof on any claim or affirmative defense by a  
4 preponderance of the evidence, it means you must be persuaded by the evidence that the claim or  
5 affirmative defense is more probably true than not true.

6 Plaintiff has the burden of proof on its claim of negligence against Defendant.

7 Defendant has the burden of proof on its claim of contributory negligence and mitigation  
8 against Plaintiff.

9 You should base your decision on all of the evidence, regardless of which party presented  
10 it.

1 INSTRUCTION NO. \_\_\_\_\_

2           The term "Proximate Cause" means a cause which in a direct sequence produces the  
3 injury complained of and without which the injury would not have happened.  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 Contributory negligence is negligence on the part of a plaintiff which, combining with the  
4 negligence of a defendant, contributes as a cause in bringing about the injury.

5 Contributory negligence, if any, on the part of the plaintiff does not bar a recovery by the  
6 plaintiff against the defendant but the total amount of damages to which the plaintiff would  
7 otherwise be entitled must be reduced in proportion to the amount of negligence attributable to  
8 the plaintiff.  
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1 INSTRUCTION NO. \_\_\_\_\_  
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4 In the event that you find there was negligence on the part of the plaintiff which  
5 contributed as a cause of plaintiff's injuries, then in order to determine the proportionate share of  
6 the total fault attributable to the plaintiff, you must evaluate the combined negligence of the  
7 plaintiff and the negligence of the defendant whose negligence contributed as a cause to  
8 plaintiff's injury.

9 In comparing the fault of these persons you should consider all the surrounding  
10 circumstances as shown by the evidence.  
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1 INSTRUCTION NO. \_\_\_\_\_  
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4 It is the duty of the Court to instruct you about the measure of damages. By instructing  
5 you on damages, the Court does not mean to suggest for which party your verdict should be  
6 rendered.

7 If you find for the plaintiff, you must determine the plaintiff's damages. The plaintiff has  
8 the burden of proving damages by a preponderance of the evidence. Damages means the amount  
9 of money which will reasonably and fairly compensate the plaintiff for any injury you find was  
10 caused by the defendant. You should consider the following:

11 Past and future pain and suffering

12 Past medical expenses

13 The plaintiff has the burden of proving damages by a preponderance of the evidence, and  
14 it is for you to determine what damages, if any, have been proved.

15 Your award must be based upon evidence and not upon speculation, guesswork or  
16 conjecture.  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 In determining the measure of damages, you should consider:

4 The pain and suffering, emotional distress, mental anguish, diminished quality of life;  
5 and

6 The reasonable value of necessary medical care, treatment, and services received to the  
7 present time.  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 If you find that plaintiff is entitled to a verdict against defendant, you should then award  
4 plaintiff damages, economic and non-economic damages, in an amount that will reasonably  
5 compensate for each of the following elements of claimed injury, damage, loss and harm. You  
6 may only award damages if you find that the harm or loss was or will be suffered by the plaintiff  
7 and was or will be caused by act or omission by defendants on which you base liability.

8 The term economic damages means objectively verifiable monetary losses including  
9 medical expenses.

10 The term non-economic damages means subjective non-monetary losses including, but  
11 not limited to pain, suffering, inconvenience, mental suffering, and emotional distress.

1 INSTRUCTION NO. \_\_\_\_\_

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3 There is no method of calculation that is prescribed by law by which to fix reasonable  
4 compensation for pain and suffering. Nor is the opinion of any witness required as to the amount  
5 of such reasonable compensation.

6 This is non-economic damage.

7 If you conclude that plaintiff is entitled to recover compensation for future non-economic  
8 damages, you should determine that amount in current dollars, that is, the amount paid at the  
9 time of judgment that will compensate a plaintiff for future pain and suffering.

1 INSTRUCTION NO. \_\_\_\_\_

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3 The plaintiff has a duty to use reasonable efforts to mitigate damages. To mitigate means  
4 to avoid or reduce damages.

5 The defendant has the burden of proving by a preponderance of the evidence:

- 6 1. that the plaintiff failed to use reasonable efforts to mitigate damages; and  
7 2. the amount by which damages would have been mitigated.

1 INSTRUCTION NO. \_\_\_\_\_  
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4 If you find that plaintiff is entitled to a verdict against defendant, you should then award  
5 plaintiff damages in an amount that will reasonably compensate plaintiff for all loss or harm,  
6 provided that you find it was or will be suffered by plaintiff and was caused by the defendant's  
7 conduct. The amount of your award should include:

8 Reasonable compensation for any fears, anxiety and other emotional distress suffered by  
9 the Plaintiff. This is a non-economic damage.

10 No definite standard or method of calculation is prescribed by law by which to fix  
11 reasonable compensation for emotional distress. Nor is the opinion of any witness required as to  
12 the amount of such reasonable compensation. Further, the argument of counsel as to the amount  
13 of damages is not evidence of reasonable compensation. In making an award for emotional  
14 distress, you shall exercise your authority with calm and reasonable judgment, and the damages  
15 you fix shall be just and reasonable in the light of the evidence.  
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1 INSTRUCTION NO. \_\_\_\_\_  
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4 The term "emotional distress" means mental distress, mental suffering or mental anguish.  
5 It includes all highly unpleasant mental reactions, such as fright, nervousness, grief, anxiety,  
6 worry, mortification, shock, humiliation and indignity, as well as physical pain.  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 Do not award a party speculative damages, which means compensation for future loss or  
4 harm which, although possible, is conjectural or not reasonably certain.

5 However, if you determine that plaintiff is entitled to recover, you should compensate  
6 plaintiff for loss or harm caused by the injury in question which is reasonably certain to be  
7 suffered in the future.  
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1 INSTRUCTION NO. \_\_\_\_\_

2  
3 Do not include as damages any amount that you might add for the purpose of punishing  
4 or making an example of the defendant for the public good or to prevent other accidents. Those  
5 damages would be punitive and they are not authorized in this action.  
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1 INSTRUCTION NO. \_\_\_\_\_  
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4 When you begin your deliberations, you should elect one member of the jury as your  
5 presiding juror. That person will preside over the deliberations and speak for you here in court.

6 You will then discuss the case with your fellow jurors to reach agreement if you can do  
7 so. Your verdict must be unanimous.

8 Each of you must decide the case for yourself, but you should do so only after you have  
9 considered all of the evidence, discussed it fully with the other jurors, and listened to the views  
10 of your fellow jurors.

11 Do not be afraid to change your opinion if the discussion persuades you that you should.  
12 Do not come to a decision simply because other jurors think it is right.

13 It is important that you attempt to reach a unanimous verdict but, of course, only if each  
14 of you can do so after having made your own conscientious decision. Do not change an honest  
15 belief about the weight and effect of the evidence simply to reach a verdict.

1 INSTRUCTION NO. \_\_\_\_\_

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3           Some of you have taken notes during the trial. Whether or not you took notes, you  
4 should rely on your own memory of what was said. Notes are only to assist your memory. You  
5 should not be overly influenced by the notes.  
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1 INSTRUCTION NO. \_\_\_\_\_

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3 A verdict form has been prepared for you. After you have reached unanimous agreement  
4 on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it,  
5 and advise the court that you are ready to return to the courtroom.  
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1 INSTRUCTION NO. \_\_\_\_\_  
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3 If it becomes necessary during your deliberations to communicate with me, you may send  
4 a note through the bailiff, signed by your presiding juror or by one or more members of the jury.  
5 No member of the jury should ever attempt to communicate with me except by a signed writing;  
6 and I will communicate with any member of the jury on anything concerning the case only in  
7 writing, or here in open court. If you send out a question, I will consult with the parties before  
8 answering it, which may take some time. You may continue your deliberations while waiting for  
9 the answer to any question. Remember that you are not to tell anyone--including me--how the  
10 jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have  
11 been discharged. Do not disclose any vote count in any note to the court.  
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